United Nations A/HRC/39/NGO/8

General Assembly

Distr.: General
3 September 2018

English only

Human Rights Council
Thirty-ninth session
10-28 September 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Maarij Foundation for Peace and Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 August 2018]

* Issued as received, in the language(s) of submission only.

GE.18-14489(E)
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AU ECOSOCC Advisory Opinion on Migration and Human Rights••

The African Migration Policy Framework (EX/CL276 (IX) and the African Common Position on Migration and Development (EX/CL Dec.305 (IX)) adopted by the African Union Executive Council in Banjul, the Gambia in June 2006 highlight the profound effect of globalization on the dynamics of cross-border migration in the current and changing international landscape. As a global phenomenon, international migration brings forth opportunities and challenges that are best addressed by a global mobility regime based on consensus and consultations among stakeholders at community, national, regional and international levels. UN estimates in 2013 indicated that about 232 M people worldwide were living outside their country of citizenship or birth for one year, representing just over three percent of the world's total population. Such migrants, if living in the same territorial entity, would be the world's fifth largest country. Indeed, almost all countries are affected by migration, as nearly every country today is either a country of origin, transit or destination. Migration brings important benefits to states of origin, transit, destination and migrants and their families but it also carries potential and actual costs for each of these categories.

The "migration and development 'lens has assumed increasing prominence as a model for addressing this concern as the international system grapples with the problem of laying building blocks for global system to regulate the movements of people. The difficulty is that International law recognizes the right of people to leave any country, including their own and to return their own country but it does not establish a right of entry to another country. The state authority in such countries retains the sovereign prerogative of deciding on criteria of admission and expulsion of non-nationals, including those involved in irregular migration. Too often, the focus of state authorities is on security and border management without acknowledgement of the intrinsic and wider benefits of migration and the need to ensure a balance in the character of these interactive aspects of the phenomenon.

CONCLUSIONS AND RECOMMENDATIONS

1. In the light of this the AU-ECOSOCC recommends a human right-based approach to migration governance as a framework for mainstreaming international migration within the global policy agenda. Concurrently, the Organ recommends the updating of the AU Policy and Migration framework and Common Position on Migration and Development to promote and place crucial emphasis on this orientation. The justification for this alignment was set forth previously. Both the AU Migration Policy Framework and the Common Position recognize the element of human rights as one of several concerns in sections (2.1) and (3.7) respectively. Indeed, the Migration Policy Framework devotes a significant part of chapter 2.1 to providing guidelines for the adoption of conventions and specific measures to protect the human rights of migrants and urges a comprehensive approach to regulatory and administrative measures to ensure safe, orderly and productive migration. However, the demand here is that it the human rights approach should become the fulcrum of policy and place migrant rights at the heart of the equation in the interest of common humanity as recognized by core international instruments.

2. Second is that the while the two AU Policy framework documents contain elements of roadmaps and recommended strategies to support policy objectives, they fall short of providing precise institutional architecture for implementation. Such an architecture must begin with a recognition of models and structures to address root causes 'the push and pull factors', spin-off and spill over consequences including the hazards of effort and travel and partnerships within African and the International society to build a coordinated and responsive framework of efficient and effective responses at various levels – individual and civil society, communities and nations, regional and global levels.

3. Third, AU-ECOSOCC recommends the establishment of a multi-stake holder dialogue process to develop solutions and implementation programs that would enable success and sustainability. So far, the nexus of efforts in Africa has put primary emphasis on Member States, intergovernmental fora and relevant international organizations and agencies. This has given rise to disconnects with the phenomenon at grassroots levels. Hence there are instances of migrants that have suffered degradations clearly showing a desire to return to these anomalous situations. There is clearly a need for a bottom up approach to evolving solutions. States and intergovernmental organizations could still lead the process but must create coordinate, independent, interactive, intersecting and reinforcing spaces for autonomous and related activities by civil society and community-based initiatives. In the development of such spaces reference can be made and lessons learnt from UN efforts such as the Global Commission on International Migration, High-level Dialogues on International

Migration and Development and the Global Forum on Migration and Development but the AU models must recognize the specific demands and peculiarities of the African environment.

4. AU-ECOSOCC further recommends that AU efforts and programs in the interim must recognize the need to feed effectively into the Global Compact for Safe and Orderly Migration that is scheduled to be finalized in December 2018. In this context, there is a need to address the need to place migrants' rights as the heart of the enterprise and to take appropriate measures to ensure global respect for human rights within the framework of migration in the interest of common humanity. The Universal Peer Review Mechanism (UPR) introduced in 2006 provides an important mechanism for monitoring and oversight of human rights as it involves a review of human rights records of all UN Member States based on the provisions of the UDHR. It may also be useful however, to push additionally for UN Member States to integrate a migrant rights assessment index within the framework of the wider assessment of global human rights record because the comfort afforded to strangers is a more explicit measurement of our basic humanity. There should also be complementary civil society and intergovernmental efforts in this regard. The African Peer Review Mechanism of the AU should also take this on board as charity begins at home. The treatment of cross-border migrants within Africa should form an important component of the State of Governance Report of the APRM as some of the worst and most despicable infractions of human rights occur within the continent in some African States that serve as transit countries. The relevance and integrity of the Migration Policy framework and Common position is strictly dependent on the way and manner in which Africa checks, prevents and eliminates such tendencies and establish processes for holding Member States to account in this regard.

5. The African Union would also need to promote and consolidate the implementation of the continental free movement protocol adopted recently in 2018 in Kigali, Rwanda as it holds forth a promise of free circulation of labor in Africa that could ultimately curb the kind of incidence noted above.

6. It is also important that the development and implementation of regional mobility regimes for migration must decry and eliminate bilateral agreements that extend the sovereign borders of Europe or destination states to Africa through processes by which African states accept a responsibility to create detention centers for African in transit countries. Apart from the fact that such agreements violate the letter and spirit of the Constitutive Act of the African Union, they are also breaching of the law, for instance in ECOWAS countries which allow for free movement of persons across the region.

7. Furthermore, there is need to address the fundamental roots of migration and its "push and pull factors" through appropriate governance policies and by strengthening the educational systems and mounting awareness and sensitization campaigns that paint realistic images of circumstances of destination countries and hazards of the unplanned migration processes so that the intending migrants can take related decisions on the basis of accurate information and expectations. Governments in Africa and elsewhere have also have a social responsibility to deliver on political promises and legitimate social aspirations through concrete service delivery and innovative public policies and programs. Such policies and programs must also apply to challenges associated with natural disasters and the demands for promoting peace and security within and among African states and between them and the wider international society.

8. The Pan-African parliament and those of various African countries can also play a concrete role in this process by supporting the work of national human rights institutions in coordination with the African Regional Centre in Banjul, encouraging governments to discuss migration within the African regional system and the UN while advocating the introduction of human rights indicators on the human rights of migrants.

9. Finally, the AU could also consider the need to appoint a Special Rapporteur on Human Rights of Migrants to coordinate these concerns under the auspices of the appropriate Departments of the AU that deals with human rights and migration concerns in close consultation with the African Union Economic, Social and Cultural Council (AU-ECOSOCC).

**African union ECOSOCC, an NGO without consultative status, also shares the views expressed in this statement.